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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,620	01/09/2002	Jason C. Gilmore	47079-0129	4385

30223 7590 09/23/2004
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EXAMINER

MOSSER, ROBERT E

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/042,620

Applicant(s)

GILMORE ET AL.

Examiner

Robert Mosser

Art Unit

3714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: 1) The applicant believes that the term "respective" has been overlooked in the examiners interpretation. While the term "respective" was addressed at least on the first page of the office action dated June 21, 2004 the applicant's arguments attempted to separate the term "associated" and "respective" are non-persuasive. In particular the claim language as so presented fails to provide a basis that would support the narrow interpretation of the term "respective" as suggested by the applicant. Applicant's further assertions to the contrary are not presently supported by evidence of law and/or the body of the application as submitted.


2) Applicant challenges the limitation of "awarding the outcomes associated with the selected element and the at least one of the non-selected outcomes." As previously stated in the rejection of June 21, 2004, Moody allows the play of multiple lines (Fig 3) with determination of outcomes associated with each line. Moody additionally allow the player to select elements from the rows and then proceeds to determine winning combinations based on the selected and non-selected elements respectively in association row culminating in the awarding of multiple outcomes. As shown one outcome is associated with a selected outcome (320) and one associated with a non-selected outcome (320, 340).

3) Applicant argues that Moody does not reveal the outcome associated with symbol upon symbol selection, however as shown in figures 1-3 the outcome selected is three of a kind and revealed in figure 3. Further the claim language as so presented does not bar the presentation of an outcome prior to selection and the revealing of the claimed invention and continued display of the symbol in the prior a are view as equivalents.

4) The applicant argues that the start-primary game "again" feature is done so without the requirement of a wager however this portion is not claimed and as such will not be addressed.

5) Applicant's argues the interchanging of the primary and secondary games of Schneider as shown in figures and 2 of the same. The interpretation of Schneider is based on two key principles. First the labeling of the invention and claimed invention components is inconsequential to patentability IF they describe the same process or function. Second even if one were to hypothetically hold that the primary game is distinct and separate from the secondary game, the claimed invention would dissolve to a matter of "mere rearrangement of parts" and would fail muster accordingly.

6) Applicant argues that in the proposed rearrangement of Schneider there would be no method to start Schneider's secondary game from Schneider's first game. Regardless to the point whether or not a wager is entered or not entered (points not presently claimed) figure 7 of Schneider clearly presents the mechanic of his invention which allow the primary game to proceed to the secondary game and vice versa



JESSICA HARRISON
PRIMARY EXAMINER